

Message Text

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PAGE 01 IAEA V 03112 01 OF 02 191829Z

ACTION ACDA-10

INFO OCT-01 IO-13 ISO-00 ACDE-00 INRE-00 SSO-00 NSCE-00

CIAE-00 INR-07 L-03 NSAE-00 NSC-05 EB-08 NRC-07

OES-06 FEAE-00 DODE-00 PM-04 SP-02 SS-15 AF-10

ARA-10 EA-09 EUR-12 NEA-10 /132 W

-----191911Z 011544 /45

O 191748Z APR 77

FM USMISSION IAEA VIENNA

TO SECSTATE WASHDC IMMEDIATE 8966

INFO USMISSION GENEVA

USERDA WASHDC IMMEDIATE

USERDA GERMANTOWN IMMEDIATE

UNCLAS SECTION 1 OF 2 IAEA VIENNA 3112

DEPT PASS IO/SCT

ACDA FOR DAVIES, GRAHAM, ERDA/ISA FOR DUFF; ERDA/OGC FOR
BRUSH; GENEVA FOR BUCHHEIM

EO 11652: NA

TAGS: PARM, TECH, IAEA

SUBJECT: IAEA AD HOC ADVISORY GROUP ON NEPP: TEXT OF GOV/COM. 23/21
(REVISION OF 23/24 AND 17)

REF: STATE 85721

PER INSTRUCTIONS PARA 7.C REFTEL U.S. REPS PREPARED
AND TABLED REVISED TEXT TO REPLACE GOV/COM.23/14 AND
17. THIS REVISED TEXT WAS REPRODUCED AND CIRCULATED
AS GOV/COM.23/21. GROUP DISCUSSION OF DOCUMENT IS
REPORTED SEPTEL. FULL TEXT OF 23/21 IS: QUOTE
VARIOUS ALTERNATIVE METHODS OF SETTING UP
AN INTERNATIONAL SERVICE FOR NUCLEAR
EXPLOSIONS FOR PEACEFUL PURPOSES

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PAGE 02 IAEA V 03112 01 OF 02 191829Z

SUGGESTED REDRAFT BY THE UNITED STATES OF AMERICA
OF MATERIAL CONTAINED IN
DOCUMENTS GOV/COM.23/14 AND 17

(A) GENERAL PRINCIPLES ESTABLISHED UNDER AGNEY AUSPICES
("ALTERNATIVE (A)")

1. UNDER THIS APPROACH, IT IS ENVISAGED THAT THE AGENCY, IN CONSULTATION AS NECESSARY WITH MEMBER STATES, COULD DRAW UP A COMPREHENSIVE LIST OF GENERAL PRINCIPLES WHICH SHOULD GOVERN SERVICES FOR NUCLEAR EXPLOSIONS FOR PEACEFUL PURPOSES, MODELLED UPON, BUT NOT NECESSARILY LIMITED TO, THE PRINCIPLES AND MATTERS SET OUT IN ANNEX II OF DOCUMENT GOV/COM.23/13. THIS LIST OF GENERAL PRINCIPLES WOULD NOT BE EMBODIED IN AN AGREEMENT BINDING UNDER INTERNATIONAL LAW, BUT WOULD FORM A BASIS OF GROUND RULES WHICH STATES SHOULD FOLLOW. THESE GENERAL PRINCIPLES MIGHT BE SUBMITTED FOR APPROVAL BY THE BOARD OF GOVERNORS AND CONTAINED IN A DOCUMENT ANALOGOUS TO INFCIRC/153 (CORRECTED) OR THE CODES OF PRACTICE IN THE AGENCY'S SAFETY SERIES. UNDER THIS APPROACH, PROJECTS CARRIED OUT THROUGH INTERNATIONAL AGREEMENTS TO WHICH THE AGENCY WAS A PARTY WOULD CONFORM TO THESE PRINCIPLES. STATES CARRYING OUT PROJECTS UNDER THE BILATERAL AGREEMENTS REFERRED TO IN ARTICLE V OF THE NPT WOULD NOT BE OBLIGED TO ADHERE TO THESE PRINCIPLES OTHER THAN THOSE COVERED BY TREATY OBLIGATIONS OF THE STATES INVOLVED. IN ADDITION, AS A FURTHER DERIVATIVE OF THIS ALTERNATIVE, THERE COULD BE ANNEXED TO THE GENERAL PRINCIPLES A MODEL PROJECT AGREEMENT WHICH COULD FORM THE BASIS FOR THE NEGOTIATION OF ANY ACTUAL PROJECT AGREEMENT BETWEEN THE AGENCY AND STATES INTERESTED IN PROCEEDING WITH A PROJECT. THE ARRANGEMENTS FOR AGENCY OBSERVATION IN ACCORDANCE WITH INFCIRC/169 WOULD BE EITHER INCLUDED IN THE PROJECT AGREEMENT OR MADE THE SUBJECT OF A SEPARATE "OBSERVATION AGREEMENT".

2. THE NEGOTIATION OF SUCH GENERAL PRINCIPLES WOULD BE A COMPARATIVELY STRAIGHTFORWARD MATTER AND, COMPARED FOR EXAMPLE WITH THE NEGOTIATION OF A MULTILATERAL INTERNATIONAL AGREEMENT, UNCLASSIFIED

UNCLASSIFIED

PAGE 03 IAEA V 03112 01 OF 02 191829Z

WOULD BE LESS TIME-CONSUMING. GENERAL PRINCIPLES WOULD REPRESENT A RELATIVELY FLEXIBLE APPROACH IN THAT STATES COULD DEVELOP DIFFERING PROCEDURES CONSISTENT WITH THIS ALTERNATIVE. STATES INTERESTED IN PROCEEDING WITH A PROJECT WOULD NOT BE BOUND HOWEVER, STRICTLY AS A MATTER OF LAW, TO THE ACCEPTANCE OR REJECTION OF ANY PARTICULAR GENERAL PRINCIPLE. THE ARRANGEMENTS AND PROCEDURES MIGHT NOT BE THE SAME FOR ALL NON-NUCLEAR WEAPON STATES, ESPECIALLY IN THE CASE OF PARTIES TO BILATERAL AGREEMENTS. DEVIATIONS FROM THE PRINCIPLES COULD OCCUR WITH REGARD TO ASPECTS SUCH AS HEALTH AND SAFETY AND CONSULTATIONS WITH THIRD STATES WHOSE TERRITORY MIGHT BE AFFECTED. GIVEN THE PRESENT STATE OF PRACTICAL KNOWLEDGE OF POSSIBLE USES FOR NUCLEAR EXPLOSIONS FOR PEACEFUL PURPOSES, IT MAY BE THOUGHT THAT THE DRAWING UP OF GENERAL PRINCIPLES IS A MORE REALISTIC GOAL AT THIS STAGE. SUCH GENERAL PRINCIPLES COULD ALSO MORE EASILY ACCOMMODATE DEVELOPMENTS ARISING OUT OF PRACTICAL EXPERIENCE.

(B) AN INTERNATIONAL MULTILATERAL AGREEMENT
("UMBRELLA" AGREEMENT) ESTABLISHING
BINDING PRINCIPLES AND PROCEDURES,
ANNEXING A MODEL PROJECT AGREEMENT AND
FORESEEING SEPARATE PROJECT AGREEMENTS
("ALTERNATIVE (B)")

3. UNDER THIS APPROACH, THE EXISTENCE OF A COMPREHENSIVE MULTI-
LATERAL AGREEMENT IS ENVISAGED, WHICH WOULD CONTAIN COMPREHENSIVE
PROVISIONS COVERING ALL THE RELEVANT SUBJECT MATTER, INCLUDING,
FOR EXAMPLE, PROVISIONS RELATING TO THE NON-PROLIFERATION OF
NUCLEAR EXPLOSIVE DEVICES, AND HEALTH AND SAFETY MATTERS.
SUCH AN AGREEMENT WOULD BE BINDING ON STATES PARTIES TO IT
IT WOULD ALSO INCORPORATE THE "APPROPRIATE INTERNATIONAL
PROCEDURES" MENTIONED IN ARTICLE V OF THE NPT AS DEVELOPED BY
THE AGENCY, WOULD DESIGNATE THE AGENCY AS THE "APPROPRIATE
INTERNATIONAL BODY" REFERRED TO IN THAT ARTICLE AND DEFINE
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PAGE 04 IAEA V 03112 01 OF 02 191829Z

ITS ROLE, AND WOULD ADDITIONALLY PROVIDE FOR AGENCY OBSERVATION
IN ACCORDANCE WITH INFCIRC 169.

4. IT IS NOT THOUGHT THAT THE PROVISIONS OF AN UMBRELLA
AGREEMENT WOULD NECESSARILY ALL NEED TO BE VERY DETAILED;
RATHER, THEY SHOULD ESTABLISH THE EXISTENCE OF PRINCIPLES AND
STANDARDS WHICH SHOULD FORM THE BACKGROUND AND BASIS FOR THE
DETAILED PROVISIONS TO BE NEGOTIATED BY THE PARTIES TO
INDIVIDUAL PROJECT AGREEMENTS. IN THIS CONNECTION, IT IS
SUGGESTED THAT THERE COULD BE ANNEXED TO THE UMBRELLA AGREEMENT
A MODEL PROJECT AGREEMENT WHICH WOULD ASSIST IN THE NEGOTIATION
OF INDIVIDUAL PROJECT AGREEMENTS. SUCH AGREEMENTS MIGHT

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PAGE 01 IAEA V 03112 02 OF 02 191852Z
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UNCLAS SECTION 2 OF 2 IAEA VIENNA 3112

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BRUSH; GENEVA FOR BUCHHEIM

THEMSELVES BE SPECIFICALLY FORSEEN IN THE UMBRELLA AGREEMENT.

5. UNIFORM AND BINDING PROVISIONS REGARDING HEALTH AND SAFETY,
LIABILITY AND CONSULTATION WITH THIRD STATES WOULD BE ASSURED
BY THIS ALTERNATIVE. SUCH AN AGREEMENT WOULD BE OPEN TO ALL
STATES WHETHER OR NOT THEY ARE MEMBES OF THE AGENCY AND
WHETHER OR NOT THEY ARE PARTIES TO THE NPT AND, IF IT WERE
WIDELY RATIFIED, NON-PARTIES WISHING TO AVAIL THEMSELVES OF
SERVICES INVOLVING NUCLEAR EXPLOSIONS FOR PEACEFUL PURPOSES
WOULD THEREBY BY ENCOURAGED TO BECOME PARTIES TO THE AGREEMENT.
MATTERS SUCH AS PRIVILEGES AND IMMUNITIES FOR PERSONNEL FROM
COOPERATING STATES AND FOR AGENCY OBSERVERS WHILE PRESENT IN
THE PROJECT COUNTRY COULD BE PROPERLY AND UNIFORMLY REGULATED.
A MODEL PROJECT AGREEMENT ANNEXED TO THE UMBRELLA AGREEMENT,
ALTHOUGH NOT BINDING STATES TO ITS DETAILED TERMS, COULD BE
GIVEN A DEFINED STATUS WHICH WOULD BE USEFUL FOR GUIDING THE
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PAGE 02 IAEA V 03112 02 OF 02 191852Z

AGENCY AND OTHER PARTIES TOWARD ACHIEVING UNIFORM AND
GENERALLY ACCEPTABLE INDIVIDUAL PROJECT AGREEMENTS.
NEGOTIATION OF A COMPREHENSIVE MULTILATERAL AGREEMENT COULD
BE A LENGTHLY PROCESS, PARTICULARLY IN THE ABSENCE OF
PRACTICAL EXPERIENCE IN THE OPERATION OF PROJECTS. IN
ADDITION, SINCE THE PROVISIONS OF SUCH AN AGREEMENT WOULD NOT BE
FLEXIBLE, CERTAIN OF THEM MIGHT BECOME OBSOLETE AS TECHNOLOGICAL
ANOTHER CIRCUMSTANCES EVOLVE.

(C) INTERLOCKING BILATERAL AGREEMENTS
("ALTERNATIVE (C)")

6. UNDER THIS APPROACH, THREE STAGES OF BILATERAL PROJECT
AGREEMENTS ARE ENVISAGED: PRE-FEASIBILITY, FEASIBILITY, AND
EXECUTION. AT EACH STAGE, A BILATERAL AGREEMENT WOULD BE
REQUIRED BETWEEN THE APPLICANT STATE AND THE CONSULTANT STATE,
OR APPLICANT STATE AND SUPPLIER NUCLEAR-WEAPON STATE, AS
APPROPRIATE.

7. THESE PROJECT AGREEMENTS WOULD CONSTITUTE THE MIDDLE LEVEL OF THE ARRANGEMENTS AND INTERNATIONAL CONTROL OR SURVEILLANCE OF THEIR CONTENT WOULD BE EXERCISED AT TWO LEVELS. ON THE ONE HAND, VARIOUS "CODES OF PRACTICE" WOULD BE DEVELOPED BY THE AGENCY TO PROVIDE BASIC TECHNICAL GUIDELINES IN EACH OF VARIOUS SPECIALIZED AREAS, FOR EXAMPLE TECHNICAL EVALUATION, ECONOMIC EVALUATION, HEALTH AND SAFETY EVALUATION, AGENCY OBSERVATION AND HEALTH AND SAFETY REQUIREMENTS IN PROJECT EXECUTION. ONE CODE MIGHT ESTABLISH GUIDELINES (RATHER THAN A "MODEL") FOR THE CONTENT OF PROJECT AGREEMENTS, ANOTHER MIGHT USEFULLY GIVE GUIDANCE ON THE RIGHTS OF THIRD PARTIES. THE OTHER LEVEL OF CONTROL WOULD BE PROVIDED BY "UMBRELLA AGREEMENTS" CONCLUDED ON A BILATERAL BASIS BETWEEN THE AGENCY AND INDIVIDUAL SUPPLIER AND CONSULTANT STATES. THESE WOULD FORMALIZE THE STATUS OF STATES AS SUPPLIERS OR CONSULTANTS IN THE CONTEXT OF THE INTERNATIONAL SERVICE, AND IN THE AGREEMENTS THESE STATES WOULD UNDERTAKE TO ABIDE BY THE UNCLASSIFIED

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PAGE 03 IAEA V 03112 02 OF 02 191852Z

GENERAL PRINCIPLES ESTABLISHED BY THE AGENCY AND APPLY, OR BE GUIDED BY, THE CODES OF PRACTICE RELEVANT TO THEIR AREA OF INVOLVEMENT IN THE PROJECT.

8. IT IS ENVISAGED THAT THE "UMBRELLA AGREEMENTS" AND THE "CODES OF PRACTICE" WOULD BE SUBJECT TO APPROVAL BY THE BOARD OF GOVERNORS OF THE AGENCY. FURTHER, THE "UMBRELLA AGREEMENTS" COULD CONTAIN CLAUSES OBLIGATING A CONSULTANT STATE TO MAKE THE FEASIBILITY STUDIES AVAILABLE TO THE AGENCY'S BOARD OF GOVERNORS FOR COMMENT AND ENDORSEMENT. SUCH ENDORSEMENT COULD BE A PRE-CONDITION FOR PROCEEDING WITH A PROJECT EXECUTION AGREEMENT. THE COMPONENTS OF THE SERVICE THUS ESTABLISHED AFFORD FLEXIBILITY WITHIN THE CONTEXT OF PHASED DEVELOPMENT AND IMPLEMENTATION. SINCE MULTILATERAL NEGOTIATION OF A COMPREHENSIVE AGREEMENT IS NOT NECESSARY, STATES COULD COMMENCE NEGOTIATIONS TO TAKE PART IN THE SERVICE AT THEIR OWN DISCRETION. ANY STATE COULD PARTICIPATE IN THE SERVICE. WHILE PROVISION COULD BE MADE FOR STATES NOT MEMBERS OF THE AGENCY TO PARTICIPATE IN THE FORMULATION OF THE COMPONENT PARTS OF THE SERVICE, PARTICIPATION BY SUCH STATES IN THE ADMINISTRATION OF THE SERVICE WOULD APPEAR TO BE IMPRACTICABLE. THE DEVELOPMENT OF THE UMBRELLA AGREEMENTS WOULD PROBABLY BE A LESS-LENGTHLY PROCESS, COMPARED FOR EXAMPLE TO DEVELOPING A COMPREHENSIVE INTERNATIONAL AGREEMENT (ALTERNATIVE B), AND WOULD NOT OF ITSELF CREATE INCENTIVES FOR PARTICULAR STATES TO CONCLUDE THE UMBRELLA AGREEMENT WITH THE AGENCY.

9. THE ARRANGEMENTS COULD ALSO HAVE APPLICATION WHERE THE BILATERAL OPTION AFFORDED BY ARTICLE V OF THE NPT WAS EXERCISED. IN THIS CASE, SUPPLIER AND CONSULTANT STATES COULD AGREE TO

CONSIDER THEMSELVES BOUND BY THE PROVISIONS OF THEIR "UMBRELLA AGREEMENT" AND THE AGENCY WOULD ALSO BE INVOLVED IN THE OBSERVATION PROCEDURES, APPROPRIATELY FORMALIZED THROUGH A TRILATERAL AGREEMENT BETWEEN THE AGENCY, SUPPLIER AND RECIPIENT. INVOLVEMENT OF THE AGENCY IN ITS ROLE AS A "BROKER" IN OBTAINING OTHER SERVICES WOULD ALSO BE POSSIBLE. SIMILAR CONSIDERATIONS
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PAGE 04 IAEA V 03112 02 OF 02 191852Z

COULD APPLY TO THE USE OF THE INTERNATIONAL SERVICE BY NON-MEMBERS OF THE AGENCY.

10. THE SCHEME CAN BE SUMMARIZED AS FOLLOWS:

"UMBRELLA AGREEMENTS" PROJECT AGREEMENTS "CODES OF PRACTICE"

FOR EXAMPLE: FOR EXAMPLE:

PRE-FEASIBILITY AND TECHNOLOGICAL EVALUA-
STUDY (APPLICANT- TION, ECONOMIC

CONSULTANT EVALUATION, HEALTH

AGREEMENT) AND SAFETY EVALUATION

AGENCY-CONSULTANTS FEASIBILITY STUDY LEGAL/CONTRACTUAL

AGREEMENT (APPLICANT- CONSULTANT GUIDELINES

AGREEMENT)

THIRD PARTY GUIDELINES

AGENCY-SUPPLIER PROJECT EXECUTION AGENCY OBSERVATION

AGREEMENT (SUPPLIER-RECIPIENT HEALTH AND SAFETY

AGREEMENT) REQUIREMENTS.

END QUOTE. STONE

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Message Attributes

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Capture Date: 01-Jan-1994 12:00:00 am
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